

**BOARD OF EQUALIZATION****BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE JOHN CHIANG, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: AUGUST 31, 2005, TIME: 9:30 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1****Title: Proposed Amendments to Cigarette and Tobacco Products Tax Regulations to Conform to New Statutes****Issue/Topic:**

Should the Board adopt and authorize the publication of the proposed amendments to the following current Cigarette and Tobacco Products Tax Regulations:

- Regulation 4055 Where Purchased; Distributors' Discount.
- Regulation 4056. Units of Sale; Minimum Sales.
- Regulation 4057. Cash Sales of Tax Stamps or Meter Register Settings.
- Regulation 4058. Application for Credit Purchases.
- Regulation 4059. Authorization for Credit Purchases.
- Regulation 4060. Payment for Credit Purchases.
- Regulation 4061. Unused Stamps and Unused Meter Settings.

The amendments conform the regulations to Senate Bill (SB) 1701 (Ch. 881, Stats. 2002) and Assembly Bill (AB) 1666 (Ch. 867, Stats. 2003). They update the method and manner in which the new cigarette tax stamps are to be purchased, affixed to packages of cigarettes, and cancelled as required by SB 1701 and specify security and reporting requirements for cigarette or tobacco products distributors electing to make payments on a twice monthly basis as required by AB 1666.

Committee Discussion:Action 1 – Agreed Upon Items

A Board Member requested that, when the amendments were submitted to the Office of Administrative Law, staff clarify which amendments were mandated by statute and which were for administrative purposes.

Action 2 – Authorization to Publish

There was no discussion of this item.

Committee Action/Recommendation/Direction:Action 1 – Agreed Upon Items

The Committee approved all agreed upon items.

Action 2 – Authorization to Publish.

The Committee recommended that the Board authorize publication as adopted in the above action. There is no operative date. Implementation will take place 30 days after approval by the Office of Administrative Law. Copies of the proposed amended regulations are attached.

Agenda Item No: 2**Title: Proposed Amendments to Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*, and to Regulation 1699, *Permits*, Regarding the Warehouse Rule Issue.****Issue/Topic:**

Should the following actions be taken: 1) Should Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*, be amended to extend direct distribution of local sales tax revenue to the city, county, or city and county where the retailer's stock of tangible personal property is located, in cases where the retailer has sales offices in this state but the sale is negotiated out of state and fulfilled by the retailer's employees from the retailer's in-state stock of goods; and 2) Should Regulation 1699, *Permits*, be amended to conform it to the proposed amendments to Regulation 1802?

Committee Discussion:Action 1 –Regulation 1802: Extend direct distribution to the location of the warehouse in cases where the retailer has in state sales offices, and clarify existing language

A number of speakers representing local jurisdictions addressed the Board in support of interested parties' Alternative 2 (Agenda Action Item 1, Option 3) as a clarification of existing law. Under this alternative, local sales tax revenue will be distributed to the location of the retailer's stock of tangible personal property, in cases where the retailer has sales offices in this state but the sale is negotiated out of state and fulfilled from the retailer's in-state stock of goods. The alternative has no operative dates and the provisions will apply retroactively.

One speaker addressed the issue of fairness and impact that would result from adopting Alternative 2. However, this speaker also favored the direct distribution as proposed.

Action 2 – Conforming amendment to Regulation 1699

Speakers supported adoption of the proposed amendment without an operative date.

Action 3 – Authorization to Publish

There was no discussion of this item.

Committee Action/Recommendation/Direction:

Action 1 – Regulation 1802: Extend direct distribution to the location of the warehouse in cases where the retailer has in state sales offices, and clarify existing language

The Committee approved Alternative 2.

Action 2 – Conforming amendment to Regulation 1699

The Committee approved the proposed amendment without an operative date.

Action 3 – Authorization to Publish.

The Committee recommended that the Board authorize publication as adopted in the above action. There is no operative date for the amendments and the provisions will apply retroactively. Implementation will take place 30 days after approval by the Office of Administrative Law. Copies of the proposed amended regulations are attached.

Approved: /s/ John Chiang
Honorable John Chiang, Committee Chair
/s/ Ramon J. Hirsig
Ramon J. Hirsig, Executive Director

BOARD APPROVED

at the August 31, 2005 Board Meeting

/s/ Gary Evans for Deborah Pellegrini
Deborah Pellegrini, Chief
Board Proceedings Division

Proposed Amendments to Cigarette and Tobacco Products Tax Regulations.

Regulation 4055. WHERE PURCHASED; DISTRIBUTORS' DISCOUNT.

Reference: Sections 30161, 30166 and 30167, Revenue and Taxation Code.

Cigarette tax stamps and meter register settings allowing the imprinting of meter impressions may be purchased by licensed distributors through stamp orders submitted to the board.~~at locations designated by the board.~~ Orders must include the distributor's account number, distributor's name and address, the quantity of stamps for each denomination, order date and the signature of the authorized individual as specified by the board. The tax stamps and meter register settings may be purchased for cash, and when authority has been granted in writing to a distributor, the tax stamps and meter register settings may be purchased on a deferred payment basis. In either case, a discount as provided by law will be allowed to a licensed distributor.

The proposed language contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Proposed Amendments to Cigarette and Tobacco Products Tax Regulations.

Regulation 4056. UNITS OF SALE; MINIMUM SALES.

Reference: Sections 30161 and 30162, Revenue and Taxation Code.

~~Heat-applied decal~~Cigarette tax stamps of the ~~denominated~~ designated for packages containing ~~value of 87¢~~10 cigarettes, 20 cigarettes and 25 cigarettes will be sold in rolls containing 1,200 or 30,000 stamps. Such stamps are sold in full rolls only and the smallest sale unit is one roll. ~~each are sold in rolls containing 30,000 stamps. Such stamps are sold in full rolls only and the smallest sale unit is one roll.~~ Heat-applied decal tax stamp of the ~~denominated value of 87¢~~ each are sold in sheets containing 150 stamps. The smallest sale unit of this type of stamp is one sheet. Heat-applied decal tax stamps for the ~~denominated value of \$1.075~~ each are sold in rolls containing 7,200 stamps. Such stamps are sold in full rolls only and the smallest sale unit is one roll. Heat-applied decal tax stamps of the ~~denominated value of 43.5¢~~ each are sold in sheets containing 100 stamps. The smallest sale unit for this type of stamp is one sheet.

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Proposed Amendments to Cigarette and Tobacco Products Tax Regulations.

Regulation 4057. CASH SALES OF TAX STAMPS OR METER REGISTER SETTINGS.

Reference: Sections 30161 and 30166, Revenue and Taxation Code.

Every distributor desiring to purchase tax stamps or meter register settings for cash shall file ~~a "Cigarette Tax Signature Card"~~ an application to register the individual authorized to order cigarette tax stamps, on a form approved by the board, ~~with the designated location where he or she will make his or her cash purchases of the tax stamps or meter register settings.~~ The distributor shall identify and authorize in writing on the form the individual who may order stamps or meter register settings for this distributor's account and include the signature of the individual authorized to submit the tax stamp orders. If a distributor wishes to allow multiple individuals to submit cigarette tax stamp orders, a ~~A~~ separate application is required for each individual authorized to order cigarette tax stamps. Orders for stamps or meter register settings shall be made by the distributor ~~to such designated location~~ on order forms approved by the board. The distributor's authorization of such individual(s) shall continue in effect until written notice of revocation of the authority is delivered to the board by registered mail or until written acknowledgment of receipt of the revocation is given by the board. Payment must be made for cash purchases at the time the stamps or meter register settings are ~~received~~ ordered. The ~~designated location~~ board may require cash, electronic fund transfer or certified or cashier's checks in payment of such purchases.

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Proposed Amendments to Cigarette and Tobacco Products Tax Regulations.

Regulation 4058. APPLICATION FOR CREDIT PURCHASES.

Reference: Sections 30142 and 30167, Revenue and Taxation Code.

Every distributor desiring to purchase tax stamps or meter register settings on the deferred payment basis shall request the board to set the maximum amount of such purchases the distributor may have unpaid at any time and the amount of the required security. The board shall set the amounts and notify the distributor by mail of the maximum amount of deferred payment purchases that the distributor may have unpaid at any time and the amount of the required security. The maximum amount of tax stamps or meter register setting purchases for which the distributor may defer payment as determined by the board shall not exceed twice the distributor's average monthly tax liability, based on the distributor's previous six months' experience, or in the case of a distributor not previously authorized to make deferred payment purchases or a distributor the character of whose business has changed substantially, the maximum amount shall not exceed twice the estimated average monthly tax liability as determined by the board.

The distributor shall provide to the board a surety bond or deposit in lieu of security in an amount equal to not less than 70 percent of the maximum amount, or more than twice the amount, of deferred payment purchases the distributor may have unpaid at any time as determined by the board.

If the distributor elects, under Section 30168, to make payments on a twice-monthly basis, the distributor shall provide to the board a surety bond or deposit in lieu of security in an amount equal to not less than 50 percent of the maximum amount, or more than twice the amount, of deferred payment purchases the distributor may have unpaid at any time as determined by the board.

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Proposed Amendments to Cigarette and Tobacco Products Tax Regulations.

Regulation 4059. AUTHORIZATION FOR CREDIT PURCHASES.

Reference: Sections 30167 and 30169, Revenue and Taxation Code.

(a) Upon approval of a distributor's request to purchase tax stamps or meter register settings on the deferred payment basis, and receipt of the required security, the board shall give written authorization to the distributor for the amount of deferred payment purchases the distributor may have unpaid at any time, ~~to the distributor and the designated location where such purchases are to be made.~~

(b) Before making deferred payment purchases of tax stamps and meter register settings, the distributor shall file an "Cigarette Tax Signature Card" ~~application to register the person authorized to order cigarette tax stamps on behalf of the distributor on a form approved by the board, with each designated location where the distributor will make credit purchases.~~ The distributor shall identify and authorize in writing on the card ~~form~~ these persons ~~individual~~ who may order purchases of stamps or meter register settings for this distributor's account and include the signature of the individual authorized to submit the tax stamp orders, at each designated location. ~~If a distributor wishes to allow multiple individuals to submit cigarette tax stamp orders, a separate application form must be submitted for each individual.~~ The distributor's authorization of such individual person(s) shall continue in effect until written notice of revocation of the authority is delivered to the board ~~designated location~~ by registered or certified mail or until written acknowledgment of receipt of the revocation is given by the board ~~designated location to the distributor.~~

(c) Orders for stamps or meter register settings shall be made by the distributor ~~to the designated location~~ on order forms approved by the board.

The proposed language contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Proposed Amendments to Cigarette and Tobacco Products Tax Regulations.

Regulation 4060. PAYMENT FOR CREDIT PURCHASES.

Reference: Sections 30167 and 30168, Revenue and Taxation Code.

Payment for all deferred payment purchases of tax stamps or meter register settings made during each calendar month must be made ~~at the designated location where the purchases were made, and must be made to the board or the board's designee~~ by the 25th day of the calendar month following the month in which the purchases were made. Remittance for such purchases shall be made payable to "State Board of Equalization." The privilege of making deferred payment purchases shall be suspended as long as a delinquent balance is owing therefor.

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Proposed Amendments to Cigarette and Tobacco Products Tax Regulations.

Regulation 4061. UNUSED STAMPS AND UNUSED METER SETTINGS.

Reference: Section 30176, Revenue and Taxation Code.

(a) The board will refund or credit to a distributor the denominated value, less the purchase discount, of any identifiable unused stamps which are returned to the board. The board will refund or credit to a distributor the denominated value, less the purchase discount, of any verifiable meter setting remaining on a meter when the meter is returned to the bank for cancellation of the meter setting. A claim for refund or credit must be made on Board of Equalization Form BOE-1024 entitled "Claim For Refund For California Cigarette Tax Stamps" and filed with the board, providing the following information: distributor's name, account number, address, telephone number, date, district office, number and type of cigarette tax stamps being claimed for refund, amount of claim for each type of cigarette tax stamp being claimed for refund, total amount of claim less discount of .0085, and reason for claim. The form further requires acknowledgement by a board representative and his or her supervisor of receipt of the cigarette tax stamps being claimed for refund and certification by a board representative of the receipt and destruction of the cigarette tax stamps being claimed for refund.

(b) "Unused stamp" means a tax stamp on a tax stamp roll or on a package of cigarettes which is not yet distributed and includes only those stamps on which 4 of the 5 characters of the stamp's serial number can be identified. If fewer than 4 characters in the stamp's serial number can be identified, the distributor shall provide evidence concerning the remainder of the tax stamp to show that the remainder of the stamp is not affixed to a package of cigarettes that has been distributed. Such proof may include, but is not limited to, the paper from the stamp roll or package of cigarettes to which the remainder of the stamp is affixed. If the stamp is of a design generated by a technology capable of being read by a scanning or similar device, a majority of the stamp must be present and should be able to be read by a scanning or similar device in accordance with Section 30162. Alternatively, as evidence of unused stamps, a distributor may return damaged stamps in such a form that a board representative is otherwise able to verify authenticity and that the stamps have not been used.

(c) If the refund or credit is for tax stamps that are affixed to packages of cigarettes, an authorized board employee, upon verification that the refund or credit is due, shall ensure that the distributor obliterated the stamp with the use of a permanent marker.

(d) If the refund or credit is for tax stamps remaining on a roll, upon verification that the refund or credit is due, the roll shall be returned to the board for destruction.

The proposed language contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Regulation 1802. PLACE OF SALE AND USE FOR PURPOSES OF BRADLEY BURNS UNIFORM LOCAL SALES AND USE TAXES.

References: Sections 6012.6, 6015, 6359, 6359.45, 7202, 7203.1, 7204.03 and 7205, Revenue and Taxation Code.

(a) IN GENERAL.

(1) **RETAILERS HAVING ONE PLACE OF BUSINESS.** For the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law, if a retailer has only one place of business in this state, all California retail sales of that retailer in which that place of business participates occur at that place of business unless the tangible personal property sold is delivered by the retailer or his or her agent to an out-of-state destination, or to a common carrier for delivery to an out-of-state destination.

(2) RETAILERS HAVING MORE THAN ONE PLACE OF BUSINESS.

(A) If a retailer has more than one place of business in this state but only one place of business participates in the sale, the sale occurs at that place of business.

(B) If a retailer has more than one place of business in this state which participate in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If this place is the place where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, approval of credit, shipment, or billing. For the purposes of this regulation, an employee's activities will be attributed to the place of business out of which he or she works.

(3) **PLACE OF PASSAGE OF TITLE IMMATERIAL.** If title to the tangible personal property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser at a place outside of the local taxing jurisdiction in which the retailer's place of business is located, or that the property sold is never within the local taxing jurisdiction in which the retailer's place of business is located.

(b) PLACE OF SALE IN SPECIFIC INSTANCES.

(1) **VENDING MACHINE OPERATORS.** The place of sale is the place at which the vending machine is located. If an operator purchases property under a resale certificate or from an out-of-state seller without payment of tax and the operator is the consumer of the property, for purposes of the use tax, the use occurs at the place where the vending machine is located.

(2) **ITINERANT MERCHANTS.** The place of sale with respect to sales made by sellers who have no permanent place of business and who sell from door to door for their own account shall be deemed to be in the county in which is located the seller's permanent address as shown on the seller's permit issued to him or her. If this address is in a county imposing sales and use taxes, sales tax applies with respect to all sales unless otherwise exempt. If this address is not in a county imposing sales and use taxes, he or she must collect the use tax with respect to property sold and delivered or shipped to customers located in a county imposing sales and use taxes.

(3) **RETAILERS UNDER SECTION 6015.** Persons regarded by the Board as retailers under Section 6015(b) of the Revenue and Taxation Code are regarded as selling tangible personal property through salespersons, representatives, peddlers, canvassers or agents who operate under or obtain the property from them. The place of sale shall be deemed to be:

(A) the business location of the retailer if the retailer has only one place of business in this state, exclusive of any door-to-door solicitations of orders, or

(B) the business location of the retailer where the principal negotiations are carried on, exclusive of any door-to-door solicitations of orders, if more than one instate place of business of the retailer participates in the sale.

The amendments to paragraph (b)(3) apply only to transactions entered into on or after July 1, 1990.

(4) **AUCTIONEERS.** The place of sale by an auctioneer is the place at which the auction is held. Operative July 1, 1996, auctioneers shall report local sales tax revenue to the participating jurisdiction (as defined in subdivision (ed) below) in which the sales take place, with respect to auction events which result in taxable sales in an aggregate amount of \$500,000 or more.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

~~(5) OUT-OF-STATE RETAILERS WHO MAINTAIN A STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA. Operative October 1, 1993, if an out-of-state retailer does not have a permanent place of business in this state other than a stock of tangible personal property, the place of sale is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to that city, county, or city and county.~~

~~(5)(6)~~ **FACTORY-BUILT SCHOOL BUILDINGS.** The place of sale or purchase of a factory-built school building (relocatable classroom) as defined in paragraph (c)(4)(B) of Regulation 1521 (18 CCR 1521), Construction Contractors, is the place of business of the retailer of the factory-built school building regardless of whether sale of the building includes installation or whether the building is placed upon a permanent foundation.

~~(6)(7)~~ **JET FUEL.**

(A) In General. The place of sale or purchase of jet fuel is the city, county, or city and county which is the point of the delivery of the jet fuel to the aircraft, if both of the following conditions are met:

1. The principal negotiations for the sale are conducted at the retailer's place of business in this state; and

2. The retailer has more than one place of business in the state.

(B) The local sales or use tax revenue derived from the sale or purchase of jet fuel under the conditions set forth in this subdivision shall be transmitted by the Board, to the city, county, or city and county where the airport is located at which such delivery occurs.

(C) Multi-Jurisdictional Airports. For the purposes of this regulation, the term "multi-jurisdictional airport" means and includes an airport that is owned or operated by a city, county, or city and county, that has enacted a state-administered local sales and use tax ordinance and as to which the owning or operating city, county, or city and county is different from the city, county, or city and county in which the airport is located. Through June 30, 2004, the local tax rate is imposed at 1.25% by Revenue and Taxation Code section 7202 (a). Operative July 1, 2004, the local tax rate is imposed at 1% by Revenue and Taxation Code section 7203.1. The local tax revenue derived from sales of jet fuel at a "multi-jurisdictional airport" shall, notwithstanding subdivision (B), be transmitted by the Board as follows:

1. In the case of the 0.25% local sales tax imposed by counties under Government Code section 29530 and Revenue and Taxation Code section 7202(a), or operative July 1, 2004, imposed by counties under Revenue and Taxation Code section 7203.1(a)(1), half of the revenue to the county which owns or operates the airport (or in which the city which owns or operates the airport is located) and half to the county in which the airport is located.

2. In the case of the remaining 1% of the local sales tax imposed by counties under Revenue and Taxation Code section 7202(a), or operative July 1, 2004, the remaining 0.75%, imposed by counties under Revenue and Taxation Code section 7203.1(a)(2), and in the case of the local sales tax imposed by cities at a rate of up to 1%, or operative July 1, 2004, at a rate of up to 0.75% under Revenue and Taxation Code section 7203.1(a)(2), and offset against the local sales tax of the county in which the city is located under Revenue and Taxation Code section 7202(h), half of the revenue to the city which owns or operates the airport and half to the city in which the airport is located. If the airport is either owned or operated by a county or is located in the unincorporated area of a county, or is owned or operated by a county and is located in the unincorporated area of a different county, the local sales tax revenue which would have been transmitted to a city under this subdivision shall be transmitted to the corresponding county.

3. Notwithstanding the rules specified in subdivisions 1. and 2., the following special rules apply:

a. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft, as described in subdivision (A), is San Francisco International Airport, the Board shall transmit one-half of the local sales tax revenues derived from such sales to the City and County of San Francisco, and the other half to the County of San Mateo.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

b. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft, as described in subdivision (A), is Ontario International Airport, the Board shall transmit local sales taxes with respect to those sales in accordance with both of the following:

c. All of the revenues that are derived from a local sales tax imposed by the City of Ontario shall be transmitted to that city.

d. All of the revenues that are derived from a local sales tax imposed by the County of San Bernardino shall be allocated to that county.

(D) Otherwise, as provided elsewhere in this regulation.

(c) TRANSACTIONS NEGOTIATED OUT OF STATE AND DELIVERED FROM THE RETAILER'S STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA

(1) If an out-of-state retailer does not have a permanent place of business in this state other than a stock of tangible personal property, the place of sale is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to that city, county, or city and county.

(2) If a retailer has a permanent place of business in this state in addition to its stocks of tangible personal property, the place of sale, in cases where the sale is negotiated out of state and there is no participation by the retailer's permanent place of business in this state, is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to the city, county, or city and county from which delivery or shipment is made.

(d)(e) ALLOCATION OF SALES TAX AND APPLICATION OF USE TAX.

Local sales tax is allocated to the place where the sale is deemed to take place under the above rules. The local use tax ordinance of the jurisdiction where the property at issue is put to its first functional use applies to such use. As used in this subdivision, the term "participating jurisdiction" means any city, city and county, or county which has entered into a contract with the Board for administration of that entity's local sales and use tax.

APPLICATION OF USE TAX GENERALLY.

(1) When the order for the property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in this state from a point outside this state, the transaction is subject to the local use tax ordinance of the participating jurisdiction where the first functional use is made. Operative July 1, 1996, for transactions of \$500,000 or more, except with respect to persons who register with the Board to collect use tax under Regulation 1684(c) (18 CCR 1684), the seller shall report the local use tax revenues derived therefrom directly to such participating jurisdiction.

(2) Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.

The amendments to paragraph (b)(4) and ~~new~~ paragraph (d)(e) shall apply prospectively only to transactions entered into on or after July 1, 1996. ~~New~~ Paragraph (d)(e) shall not apply to lease transactions.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Regulation 1699. PERMITS

References: Sections 6066-6075, Revenue and Taxation Code.

(a) IN GENERAL – NUMBER OF PERMITS REQUIRED. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:

A permit is required for a branch sales office at which orders are customarily taken and contracts negotiated, whether or not merchandise is stocked there.

No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale.

Permits are required for warehouses or other places at which merchandise is stored and which customers do not customarily visit for the purpose of making purchases and from which retail sales of such merchandise negotiated out of state are delivered or fulfilled.

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one permit is required. For example:

A service station operator having a restaurant in addition to the station on the same premises requires only one permit for both activities.

(b) PERSONS SELLING IN INTERSTATE COMMERCE OR TO UNITED STATES GOVERNMENT. A permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code section 6006(g)) are made to the United States or instrumentalities thereof.

(c) PERSONS SELLING FEED. Effective April 1, 1996, a permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

If a seller of hay is also the grower of the hay, this exemption shall apply only if either:

1. The hay is produced for sale only to beef cattle feedlots or dairies, or
2. The hay is sold exclusively through a farmer-owned cooperative.

(d) CONCESSIONAIRES. For the purposes of this regulation, the term concessionaire is defined as an independent retailer who is authorized, through contract with, or permission of, another retail business enterprise (the prime retailer), to operate within the perimeter of the prime retailer's own retail business premises, which to all intents and purposes appear to be wholly under the control of that prime retailer, and to make retail sales that to the general public might reasonably be believed to be the transactions of the prime retailer. Some indicators that a retailer is *not* operating as a concessionaire are that he or she:

- Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer's premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.
- Maintains separate business records, particularly with respect to sales.

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- Establishes his or her own selling prices.
- Makes business decisions independently, such as hiring employees or purchasing inventory and supplies.
- Registers as a separate business with other regulatory agencies, such as an agency issuing business licenses, the Employment Development Department, and/or the Secretary of State.
- Deposits funds into a separate account.

In cases where a retailer is not operating as a concessionaire, the prime retailer is *not* liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly and severally liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire while operating as a concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

- The permit number of the concessionaire
- The location for which the permit is issued (must show the concessionaire's location within the perimeter of the prime retailer's location)
- Signature of the concessionaire
- Date

While any statement, taken timely, in good faith and containing all of these essential elements will relieve a prime retailer of his or her liability for the unreported sales or use taxes of a concessionaire, a suggested format of an acceptable statement is provided as Appendix A to this regulation. While not required, it is suggested that the statement from the concessionaire contain language to clarify which party will be responsible for reporting and remitting the sales and/or use tax due on his or her retail sales.

In instances where the lessor, or grantor of permission to occupy space, is not a retailer himself or herself, he or she is not liable for any sales or use taxes owed by his or her lessee or grantee. In instances where an independent retailer leases space from another retailer, or occupies space by virtue of the granting of permission by another retailer, but does not operate his or her business within the perimeter of the lessor's or grantor's own retail business, such an independent retailer is not a concessionaire within the meaning of this regulation. In this case, the lessor or grantor is not liable for any sales or use taxes owed by the lessee or grantee.

(e) AGENTS. If agents make sales on behalf of a principal and do not have a fixed place of business, but travel from house to house or from town to town, it is unnecessary that a permit be obtained for each agent if the principal obtains a permit for each place of business located in California. If, however, the principal does not obtain a permit for each place of business located in California, it is necessary for each agent to obtain a permit.

(f) INACTIVE PERMITS. A permit shall be held only by persons actively engaging in or conducting a business as a seller of tangible personal property. Any person not so engaged shall forthwith surrender his or her permit to the Board for cancellation. The Board may revoke the permit of a person found to be not actively engaged in or conducting a business as a seller of tangible personal property.

Upon discontinuing or transferring a business, a permit holder shall promptly notify the Board and deliver his or her permit to the Board for cancellation. To be acceptable, the notice of transfer or discontinuance of a business must be received in one of the following ways:

(1) Oral or written statement to a Board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the Board, if lost, destroyed or is unavailable for some other acceptable reason, but notice of cessation of business must be given.

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(2) Receipt of the transferee or business successor's application for a seller's permit may serve to put the Board on notice of the transferor's cessation of business.

Notice to another state agency of a transfer or cessation of business does not in itself constitute notice to the Board.

Unless the permit holder who transfers the business notifies the Board of the transfer, or delivers the permit to the Board for cancellation, he or she will be liable for taxes, interest and penalties (excluding penalties for fraud or intent to evade the tax) incurred by his or her transferee who with the permit holder's actual or constructive knowledge uses the permit in any way; e.g., by displaying the permit in transferee's place of business, issuing any resale certificates showing the number of the permit thereon, or filing returns in the name of the permit holder or his or her business name and under his or her permit number. Except in the case where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor, the liability shall be limited to the quarter in which the business is transferred, and the three subsequent quarters.

Stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity shall be regarded as having the "real or ultimate ownership" of the property of the corporation or other entity.

(g) DUE DATE OF RETURNS - CLOSEOUT OF ACCOUNT ON YEARLY REPORTING BASIS. Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.

(h) BUYING COMPANIES - GENERAL.

(1) **DEFINITION.** For the purpose of this regulation, a buying company is a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services, for the other entity. It is presumed that the buying company is formed for the operational reasons of the entity which owns or controls it or to which it is otherwise related. A buying company formed, however, for the sole purpose of purchasing tangible personal property ex-tax for resale to the entity which owns or controls it or to which it is otherwise related in order to re-direct local sales tax from the location(s) of the vendor(s) to the location of the buying company shall not be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall not be issued a seller's permit. Sales of tangible personal property to third parties will be regarded as having been made by the entity owning, controlling, or otherwise related to the buying company. A buying company that is not formed for the sole purpose of so re-directing local sales tax shall be recognized as a separate legal entity from the related company on whose behalf it acts for purposes of issuing it a seller's permit. Such a buying company shall be issued a seller's permit and shall be regarded as the seller of tangible personal property it sells or leases.

(2) **ELEMENTS.** A buying company is not formed for the sole purpose of re-directing local sales tax if it has one or more of the following elements:

(A) Adds a markup to its cost of goods sold in an amount sufficient to cover its operating and overhead expenses.

(B) Issues an invoice or otherwise accounts for the transaction.

The absence of any of these elements is not indicative of a sole purpose to redirect local sales tax.

(i) WEB SITES. The location of a computer server on which a web site resides may not be issued a seller's permit for sales tax purposes except when the retailer has a proprietary interest in the server and the activities at that location otherwise qualify for a seller's permit under this regulation.

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